

4 September 2018

APRRN Statement

Suspend Policy to End Refugee Status of Chin Refugees from Myanmar

The Asia Pacific Refugee Rights Network (APRRN) is deeply concerned about UNHCR's recent decision to implement a policy to end refugee status of Chin refugees from Myanmar. This policy, announced by UNHCR on 13 June 2018 will affect approximately 30,140 Chin refugees currently residing in Malaysia and a further 3,000 living in India. This change, if implemented, may result in many people being unfairly stripped of their refugee status and potentially returned to a country where their life is in danger.

Since winning a landslide victory in Myanmar's 2015 general election, the NLD-led government has taken some positive steps towards instituting peace across the country. The change in government was largely perceived within the international community as a positive and crucial step, leading to some hope about the possibility of change.

However, it must be stressed that substantive change has still not materialised for the country's numerous ethnic minorities, nor have conditions in many areas of the country improved in a manner that is conducive to return for long-displaced Myanmar refugees. In the case of Chin State, as well as several other ethnic minority areas, there is an ongoing military presence, documented evidence of recent military skirmishes, and a high likelihood that large numbers of returnees may exacerbate simmering national tensions.

As the Policy is a declaration for cessation of refugee status, APRRN relies on the Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C (5) and (6) of the 1951 Convention relating to the Status of Refugees ("Guidelines"), that requires certain basic standards to be met when such a policy is initiated. However, in the present case, we believe that the Policy does not meet the criteria, substantial or procedural for the reasons set out below.

Article 1(C) of the 1951 Refugee Convention states that cessation may apply when a refugee "*can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.*" These "*circumstances*" refer to *fundamental* change in the country, which is language mirrored in the Cessation Guidelines put forth by UNHCR. Though there have been recent improvements in the situation in some parts of Myanmar, there has been no fundamental change in the country as a whole to merit cessation of refugee status, particularly for ethnic and religious minority populations.

In addition, cessation may not be invoked where the return of former refugees would be likely to generate fresh tension in the country of origin. In continuation, the change in circumstances is required to be '*significant and profound*' and that these changes '*should be given time to consolidate before any decision on cessation is made*'. In assessing the durability of the change, developments such as voluntary repatriation and the experience of returnees should be given considerable weight, as well as reports from independent observers. Readily available country of origin information and recent news confirms ongoing conflict in Chin state as recently as 2017.

Furthermore, Chin State continues to be heavily militarized by the Myanmar Army, who continue to perpetrate human rights abuses throughout the country. Additionally, given that the National League of Democracy (NLD) was only elected into power in 2015, and the military continues to enjoy power and impunity for rampant human rights abuses, APRRN asserts that it is premature to conclusively state that refugees can safely return to Chin State, or elsewhere in Myanmar.

Furthermore, the Guidelines require that in determining a change in circumstances, and in order to ensure that protection has been restored, it must be effective and available. This '*requires more than mere physical security or safety*'. This includes the existence of a functioning government and basic administrative structures, as evidenced for instance through a functioning system of law and justice, as well as adequate infrastructure to enable residents to exercise their rights, including their right to a basic livelihood.

However, there is no publicly available information of such socio-economic and political structures functioning in Chin state. Ethnic Chins forced to return are in danger of not being able to return to their original place of residence, thereby ending up in IDP situations, vulnerable to exploitation and persecution. This may not only endanger returnees, but also generate fresh tension in Myanmar towards ethnic and religious minorities.

The Guidelines in its *paragraph 6* states that '*cessation should not result in a person residing in a host State with an uncertain status*'. Given that the Myanmar government has not made any public statement about extending protection to returnees to Chin state, ending their refugee status prematurely in the host country without a cohesive, comprehensive repatriation and reintegration plan may result in Chin refugees being rendered in limbo, unable to return and unable to stay on in the absence of a clear status.

Based upon an in-depth legal research conducted by APRRN, it appears that the current cessation policy is tantamount to 'partial cessation' i.e. a situation where changes have only taken place in parts of a country, and thus should not lead to cessation of refugee status.

Refugee status can only end if the basis of persecution is removed without the precondition that the refugee should return to a specific safe area of the country in order to be free from persecution. In the present case, Rakhine State bordering Chin State to the south and Kachin State bordering Sagaing to the north-east, are in the midst of a humanitarian crisis with reports of grave human rights violations by the Myanmar State.

The UNHCR offices in India and Bangkok should be acknowledged for their openness, in engaging with alternative solutions, particularly the UNHCR India office for their recent decision to defer individual cessation notification interviews until mid-December 2018, and to undertake an information gathering mission to Chin State later this year. These are important steps in ensuring that Chin refugees are well-informed in their decision-making as it relates to repatriation.

In light of the above, APRRN reaffirms our calls for the halting of cessation proceedings by UNHCR. In addition we also request that the UNHCR:

- Suspends the withdrawal of UNHCR refugee cards, which offer crucial protection from arrest for undocumented for Chin refugees, until such a time where a comprehensive review of the cessation policy has been carried out.
- Extend the scope of the information gathering mission to Chin State beyond simply identifying existing infrastructure and support, to also ascertain the protection concerns of the affected refugee populations;
- Make public all relevant country of origin information from Chin State, including the findings from the upcoming mission to enable Chin refugees in all concerned host countries to make informed decisions about return.
- Ensure that Chin refugees, and all other refugee populations are not effectively forced to return against their will;
- Ensure that policies, and implementation thereof, relating to cessation of status is applied consistently for all Chin refugees.
- Work with host countries and Myanmar to genuinely work together to create a situation in Chin state whereby refugees can return in safety and dignity.

While APRRN statements are prepared in consultations with APRRN members, they do not necessarily reflect the views of all members.

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